

48A C.J.S. Judges § 175

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

H. Particular Judges

1. Successor Judges

a. Authority to Make Decision on Evidence Heard by Predecessor

§ 175. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  32

Although the judicial powers and duties of a judge who dies or otherwise departs from office ordinarily devolve on his or her successor, the general rule is that a successor judge lacks the authority to make a decision in a case in which evidence was presented to and heard by a prior judge who has failed to make findings of fact and conclusions of law or otherwise render a judgment.

Since a court retains its identity regardless of a change of its functionaries, the judicial powers and duties of a judge who dies or otherwise departs from office ordinarily devolve on his or her successor¹ or on the surviving or remaining judges.² Thus, it is incumbent upon the succeeding judge, when a proper motion is made, to enforce a lawful order made by his or her predecessor.³

On the other hand, the general rule is that a successor judge lacks the authority to make a decision in a case in which evidence was presented to and heard by a prior judge who has failed to make findings of fact and conclusions of law or otherwise render a judgment.⁴ The legal principle underlying this general rule is that due process entitles a litigant to a decision on the facts by a judge who has heard the evidence⁵ and has been afforded an opportunity to assess the credibility of witnesses by observing their demeanor.⁶ Therefore, where a successor judge assumes authority in a case after evidence or oral testimony is heard by a predecessor judge, but before the predecessor has made findings of fact and conclusions of law, the successor judge generally has no power to render a verdict or judgment without holding a trial de novo.⁷

State statutes or rules expressly authorizing a successor judge to perform duties upon the disability or death of a predecessor judge when findings of fact or conclusions of law have been filed by such predecessor⁸ may not be construed to allow a successor judge to make a decision on evidence presented to and heard by a predecessor who has not rendered judgment or entered findings of fact and conclusions of law.⁹ Rather, such provisions contemplate that the successor perform only such acts as are necessary to effectuate a decision already made.¹⁰

A state statute requiring that in criminal cases, the trial and sentencing proceedings must be conducted by the same judge, requires that a successor judge grant a new trial in the situation in which the original judge's contact with the victim's relatives prior to a presentence hearing mandates the judge's disqualification from the case.¹¹

Question of law.

The extent of a successor judge's authority to perform judicial duties is a question of law.¹²

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Footnotes

- 1 Alaska—[Thomas v. State](#), 592 P.2d 1248 (Alaska 1979).

Ky.—[Cox v. Braden](#), 266 S.W.3d 792 (Ky. 2008).

Me.—[Reynolds v. Hooper](#), 407 A.2d 312 (Me. 1979).

As to the powers of a judge who succeeds himself or herself, see § 162.
- 2 Pa.—[Chuplis v. Steve Shalamanda Coal Co.](#), 192 Pa. Super. 76, 159 A.2d 520 (1960).
- 3 Ariz.—[Costa v. Mackey](#), 227 Ariz. 565, 261 P.3d 449 (Ct. App. Div. 1 2011).

Pa.—[Com. ex rel. Silverman v. Silverman](#), 180 Pa. Super. 94, 117 A.2d 801 (1955).
- 4 Fla.—[Alcenat v. Alcenat](#), 989 So. 2d 738 (Fla. 4th DCA 2008).

Ill.—[Smith v. Freeman](#), 232 Ill. 2d 218, 327 Ill. Dec. 683, 902 N.E.2d 1069 (2009).

Nev.—[Smith's Food King No. 1 v. Hornwood](#), 108 Nev. 666, 836 P.2d 1241 (1992).

N.Y.—[Johnson v. Societe Generale S.A.](#), 94 A.D.3d 663, 943 N.Y.S.2d 74 (1st Dep't 2012).

N.D.—[Helbling v. Helbling](#), 532 N.W.2d 650 (N.D. 1995).

A.L.R. Library
Power of Successor or Substituted Judge, in Civil Case, to Render Decision or Enter Judgment on Testimony Heard by Predecessor, 84 A.L.R.5th 399.
- 5 Cal.—[Absmeier v. Simi Valley Unified School Dist.](#), 196 Cal. App. 4th 311, 126 Cal. Rptr. 3d 237, 268 Ed. Law Rep. 446 (2d Dist. 2011), as modified on denial of reh'g, (June 29, 2011).

Ill.—[Smith v. Freeman](#), 232 Ill. 2d 218, 327 Ill. Dec. 683, 902 N.E.2d 1069 (2009).

Ind.—[In re D.P.](#), 994 N.E.2d 1228 (Ind. Ct. App. 2013).

Iowa—[In re Marriage of Seyler](#), 559 N.W.2d 7, 84 A.L.R.5th 775 (Iowa 1997).

- 6 Ill.—*Smith v. Freeman*, 232 Ill. 2d 218, 327 Ill. Dec. 683, 902 N.E.2d 1069 (2009).
- Ind.—*Termination of Parent-Child Relationship of S.B. v. Marion County Dept. of Child Services*, 999 N.E.2d 419 (Ind. Ct. App. 2013).
- 7 Fla.—*Reaves v. Reaves*, 546 So. 2d 744 (Fla. 2d DCA 1989).
- Ill.—*Smith v. Freeman*, 232 Ill. 2d 218, 327 Ill. Dec. 683, 902 N.E.2d 1069(2009).
- Mass.—*Psy-Ed Corp. v. Klein*, 459 Mass. 697, 947 N.E.2d 520 (2011).
- 8 § 179.
- 9 Ark.—*Wallace Baker Chevrolet Co., Inc. v. Nelson*, 289 Ark. 470, 712 S.W.2d 896 (1986).
- Nev.—*Smith's Food King No. 1 v. Hornwood*, 108 Nev. 666, 836 P.2d 1241 (1992).
- S.D.—*Hinman v. Hinman*, 443 N.W.2d 660 (S.D. 1989).
- Wash.—*DGHI, Enterprises v. Pacific Cities, Inc.*, 137 Wash. 2d 933, 977 P.2d 1231 (1999).
- 10 N.C.—*Matter of Whisnant*, 71 N.C. App. 439, 322 S.E.2d 434 (1984).
- 11 Ariz.—*State v. Leslie*, 136 Ariz. 463, 666 P.2d 1072 (1983).
- 12 Minn.—*Kornberg v. Kornberg*, 542 N.W.2d 379 (Minn. 1996).